

**BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION**

WILLIAM DANIELS)	
Claimant)	
VS.)	
)	Docket No. 214,813
HUBBARD MILLING COMPANY)	
Respondent)	
)	
AND)	
)	
ZURICH INSURANCE COMPANY)	
Insurance Carrier)	

ORDER

Administrative Law Judge Bruce E. Moore granted claimant's request for medical and temporary total disability benefits in the preliminary hearing Order dated January 10, 1997.

ISSUES

Respondent appealed, requesting Appeals Board review of whether claimant suffered an accidental injury that arose out of and in the course of his employment.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

After reviewing the preliminary hearing record and considering the briefs of the parties, the Appeals Board finds as follows:

Whether claimant's injury was work-related is a jurisdictional issue that grants the Appeals Board jurisdiction to review a preliminary hearing order. See K.S.A. 1996 Supp. 44-534a.

Claimant alleges he injured his low back while performing repetitive lifting activities as a bagger and stacker for the respondent. Claimant testified his low back first became symptomatic in January 1996. Those low back symptoms accelerated to a point during the first two weeks of April 1996, that respondent on a few occasions placed the claimant on light duty. However, claimant's low back problem did not become completely disabling until April 28, 1996, when claimant felt pain in his low back and left leg as he got up from the table after drinking a cup of coffee at home.

Claimant sought medical treatment on his own the following day, April 29, 1996, from chiropractor, G. A. Carr. Claimant did not improve from the chiropractic treatments. Therefore, on May 9, 1996, claimant sought relief from his low back and leg pain from his family physician, Michael R. Wesley, M.D. Dr. Wesley placed claimant on a program of medication and rest. Dr. Wesley also ordered an MRI. The MRI revealed a lateral left L4-5 disc herniation probably impinging on the left nerve root and an L5-S1 disc with degenerative changes and a bulging annulus.

Dr. Wesley then referred claimant to the Kansas Orthopaedic Center in Wichita, Kansas. Kris Lewonowski, M.D., first saw claimant on May 22, 1996. Dr. Lewonowski prescribed epidural steroid injections that resulted in little or no improvement to claimant's condition. Finally, Dr. Lewonowski performed an L4-5 hemilaminectomy discectomy, partial facetectomy and foraminotomy to the left on August 26, 1996. At the preliminary hearing held on November 8, 1996, claimant had not been released for work and remained under Dr. Lewonowski's care.

After the preliminary hearing, the Administrative Law Judge in an order dated November 13, 1996, appointed C. Reiff Brown, M.D., as a neutral physician pursuant to K.S.A. 44-516 to perform an independent medical examination of the claimant. The Administrative Law Judge requested Dr. Brown to offer opinions on diagnosis, treatment, ability to work, temporary restrictions, and whether claimant's low back condition was causatively related to his employment duties.

Dr. Brown examined the claimant on December 18, 1996, and had the benefit of claimant's previous medical treatment records, claimant's deposition testimony, and preliminary hearing testimony. Dr. Brown attributed claimant's work activities, primarily in the early months of 1996, as the causative factor resulting in claimant's disc herniation. Dr. Brown did not attribute claimant's back condition to the incident that occurred at home on April 28, 1996. Claimant also testified his current back problems were the result of the lifting, turning, twisting, and bending activities he performed at work.

Respondent argues the preliminary hearing record does not support a finding that claimant's low back injury was work-related. Respondent concludes claimant's herniated disc and subsequent surgery was caused by the natural aging process which is not a compensable injury covered by the Workers Compensation Act. See K.S.A. 1995 Supp. 44-508(e)

The Appeals Board disagrees with respondent's argument and finds the preliminary hearing record as a whole proves claimant suffered a low back injury while performing daily work activities while employed by respondent. The Appeals Board concludes that claimant's testimony, coupled with the independent medical examination report of orthopedic surgeon, C. Reiff, Brown, M.D., support this finding.

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the preliminary hearing Order of Administrative Law Judge Bruce E. Moore dated January 10, 1997, should be, and is hereby affirmed in all respects.

IT IS SO ORDERED.

Dated this ____ day of March 1997.

BOARD MEMBER

c: Randall C. Henry, Hutchinson, KS
Stephen J. Jones, Wichita, KS
Bruce E. Moore, Administrative Law Judge
Philip S. Harness, Director